

DANIEL F. POLSENBERG (SBN 2376)
J CHRISTOPHER JORGENSEN (SBN 5382)
ABRAHAM G. SMITH (SBN 13,250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8200
DPolsenberg@LRRC.com
CJorgensen@LRRC.com
ASmith@LRRC.com

*Attorneys for Defendant BZ Clarity Holdings, LLC
d/b/a Base Entertainment*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JC HOSPITALITY, LLC, a Delaware
limited liability company, HRHH
PROPCO, LLC, a Delaware limited
liability company; HRHH CAFÉ
PROPCO, LLC, a Delaware limited
liability company; MARTIN-HARRIS
CONSTRUCTION, LLC, a Nevada limited
liability company by and through its
assignee JC HOSPITALITY, LLC,

Plaintiffs,

vs.

BZ CLARITY HOLDINGS, LLC d/b/a BASE
ENTERTAINMENT, a Delaware limited
liability company; SLATE THE VOICE
LIMITED PARTNERSHIP, a Delaware
limited partnership; BASE THE VOICE,
LLC, a Delaware limited liability
company; ROE COMPANIES, 1–10; DOE
INDIVIDUALS, 3–10; MOE LIMITED
LIABILITY COMPANIES, 2–10; and NOE
PARTNERSHIPS, 1–10,

Defendants.

Case No.:

**PETITION FOR REMOVAL
OF A CIVIL ACTION**

1 SLATE THE VOICE LIMITED
2 PARTNERSHIP, a Delaware limited
3 partnership; BASE THE VOICE, LLC, a
4 Delaware limited liability company,

5 Counter-claimants,

6 vs.

7 JC HOSPITALITY, LLC, a Delaware
8 limited liability company, HRHH
9 PROPCO, LLC, a Delaware limited
10 liability company; HRHH CAFÉ
11 PROPCO, LLC, a Delaware limited
12 liability company; JUNIPER CAPITAL
13 PARTNERS, LLC, a Delaware limited
14 liability company; ROE COMPANIES, 1–
15 10; DOE INDIVIDUALS, 3–10; MOE
16 LIMITED LIABILITY COMPANIES, 2–10;
17 and NOE PARTNERSHIPS, 1–10,

18 Counter-Defendants.

19 TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
20 COURT FOR THE DISTRICT OF NEVADA:

21 The removing party, defendant BZ Clarity Holdings, LLC d/b/a Base
22 Entertainment (“BZ Clarity”) respectfully shows:

23 **PROCEDURAL HISTORY OF STATE COURT ACTION**

24 1. BZ Clarity is one of three defendants in the above-entitled
25 action, along with Slate the Voice Limited Partnership (“Slate”) and Base
26 the Voice, LLC (“Base”) (collectively “Defendants”).

27 2. Plaintiffs JC Hospitality, LLC, HRHH Propco, LLC, HRHH Café
28 Propco LLC, (“Plaintiffs”) commenced this action in the Eighth Judicial
District Court of the State of Nevada, in and for the County of Clark, and it
is now pending in that court under the designated case number A-19-03234-

1 B, Department XXVII¹.

2 3. Plaintiffs' First Amended Complaint asserts claims for (1) breach
3 of lease; (2) breach of implied covenant of good faith and fair dealing; (3)
4 breach of construction contract; (4) fraud; (5) conversion; (6) civil conspiracy
5 to commit fraud and conversion; (7) unjust enrichment; and (8) declaratory
6 relief. In short, Plaintiffs allege Defendants failed to follow through with an
7 agreement to build and operate a music venue at the Hard Rock Hotel in
8 Las Vegas, Nevada. Plaintiffs additionally allege Defendants wrongfully
9 kept tenant improvement funds that Plaintiffs gave them for the venue.
10 (See Ex. 1, First Amended Complaint ("FAC")).

11 4. Plaintiffs served BZ Clarity with the FAC on June 25, 2020.

12 5. Under 28 U.S.C. § 1446(b)(1), this petition for removal is timely
13 and proper, because it comes within thirty days of BZ Clarity's receipt,
14 through service or otherwise, of a copy of the initial pleading against BZ
15 Clarity, setting forth the claims for relief upon which this action is based.

16 **THIS COURT HAS DIVERSITY JURISDICTION**

17 6. Under 28 U.S.C. § 1332, this Court has diversity jurisdiction,
18 because this action is between citizens of different states and/or countries
19 and—based on the relief requested—the amount in controversy exceeds
20 \$75,000.

21 7. Diversity exists among the parties who are Limited Liability
22 Corporations ("LLCs") when the citizenship of the individual members of
23

24 ¹ Plaintiffs filed their original Complaint on October 7, 2019, naming as
25 defendants Slate and Base. On November 20, 2019, Slate and Base filed an
26 Answer and Counterclaim against the original Plaintiffs and added Jupiter
27 Capital Partners, LLC as a counter-defendant. Plaintiffs filed a First
28 Amended Complaint on June 22, 2020, adding BZ Clarity as a defendant.
BZ Clarity petitions the Court to Remove the First Amended Complaint
under 28 U.S.C. §1441(B) diversity.

the LLCs is also diverse. *See generally Americold Realty Tr. V. Conagra Foods, Inc.*, 136 S. Ct.1012 (2016). At the pleading stage, it is enough for a party to assert diversity on the basis of information and belief. *Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082 (9th Cir. 2014) (asserting the sensible principle that at the pleading stage, a party should not be required to plead jurisdiction against an LLC based on actual knowledge). In regards to the parties involved in this case, Defendants assert diversity on the basis of information, belief and the Declaration of Jay Wolf, Chairman of the Board of JC Hospitality, LLC. Specifically, Plaintiffs real parties in interest are citizens of Delaware and Canada, while Defendants are citizens of Illinois, New York, Washington, Indiana, Nevada, Texas, California, New Jersey, Minnesota, and Japan, as follows:

a. Plaintiff **JC Hospitality, LLC** is a Delaware limited liability company (Ex. 1, FAC, ¶ 5). JC Hospitality's sole member is JC Vegas Mezz Co., LLC, whose sole member is JCLPF Vegas, LLC, which is in turn owned by various investor groups that appear to originate in Canada. (Ex. 2, Declaration of Jay Wolf, Chairman of the Board of JC Hospitality, LLC, including Organizational Chart tracing ownership, attached as Exhibit 1 to Counter-Defendant Juniper Capital Partners, LLC's Reply In Support of Motion to Dismiss Counter-Claim For Lack of Personal Jurisdiction.)

b. Upon information and belief, one of JCLPF's members is **JC Vegas Holdings (US), Inc.** a Delaware corporation with its principle place of business in Canada. (Ex. 2.)

c. Upon information and belief, **HRHH PropCo, LLC** is a Delaware limited liability company. HRHH PropCo is a subsidiary of JC Hospitality, LLC, and is the current owner of real property designated APN

1 162-21-615-003, upon which the Hard Rock Hotel is built. (Ex. 1, FAC, ¶¶
2 2-4 and Ex. 2). HRHH PropCo, LLC's sole member is JC Hospitality LLC,
3 which is in turn owned by JC Vegas Mezz Co., LLC, which, as described
4 above, is owned by various investor groups that appear to originate in
5 Canada. (Ex. 2.)

6 d. Upon information and belief, **HRHH Café PropCo, LLC**
7 is a Delaware limited liability company. HRHH Café PropCo, LLC, is a
8 subsidiary of JC Hospitality, LLC, and is the current owner of real property
9 designated APN 162-22-201-004, upon which the Hard Rock Hotel is built.
10 (Ex. 1 FAC, ¶¶ 2-4 and Ex. 2.) HRHH Café PropCo, LLC's sole member is
11 JC Hospitality LLC, which is in turn owned by JC Vegas Mezz Co., LLC,
12 which, as described above, is owned by various investor groups that appear
13 to originate in Canada. (Ex. 2.)

14 e. Defendant **BZ Clarity** is a Delaware limited liability
15 company, whose members are citizens of New York, Texas, California and
16 Japan. (See Ex. 3, Declaration of Tim Ward, regarding the ownership of BZ
17 Clarity.)

18 f. Co-defendant **Slate** is a Delaware limited liability
19 company, whose members are citizens of Illinois, New York, Washington,
20 Indiana, Nevada, Texas, California, New Jersey and Minnesota. (See Ex.
21 3).

22 g. Co-defendant **Base** is a Delaware limited liability
23 company, whose sole member is BZ Clarity. (See Ex. 3.)

24 h. Upon information and belief, one of JCLPF's members is
25 JC Vegas Holdings (US), Inc. a Delaware corporation with its principle
26 place of business in Canada.

27 i Upon information and belief, counter-defendant **Juniper**
28

1 **Capital Partners, LLC**, is owned by a similar series of other LLCs,
 2 described in Exhibit 2 and the accompanying corporate organization chart
 3 which leads back to Canadian owners, and principle place of business
 4 outside of Nevada.²

5 8. Plaintiffs have confirmed that Martin-Harris Construction, LLC,
 6 who assigned its rights to the remaining Plaintiffs, is a nominal party only,
 7 not a real party in interest whose citizenship counts for diversity. *See*
 8 *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980) (“[A] a federal court
 9 must disregard nominal or formal parties and rest jurisdiction only upon
 10 the citizenship of real parties to the controversy.”); *Strotek Corp. v. Air*
 11 *Transp. Ass'n. of Am.*, 300 F.3d 1129, 1133 (9th Cir. 2002) (party without a
 12 “stake in the outcome of this case” is not a real party in interest); *Atchison,*
 13 *T. & S. F. R. Co. v. Phillips*, 176 F. 663, 666 (9th Cir. 1910) (“the diversity
 14 must exist between the real, substantial parties to the cause, and that the
 15

16 ² This Court need not evaluate diversity based on the citizenship of third-
 17 party defendant **Juniper Capital Partners, LLC**. *Nev. Eighty-Eight, Inc.*
 18 *v. Title Ins. Co. of Minn.*, 753 F. Supp. 1516, 1521–22 (D. Nev. 1990)
 19 (“[U]nder normal circumstances the presence of non-diverse third-party
 20 defendants does not destroy diversity.” (citing FRCP 24)); *see also Baker v.*
 21 *Westin Rio Mar Beach Resort, Inc.*, 194 F.R.D. 393, 397–98 (D.P.R. 2000)
 22 (citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 65–67 n.1 (1996) and collecting
 23 cases); *Cnty. Med. Ctr. of W. Ill. Inc. v. All. Imaging Inc.*, 07-4029, 2008 WL
 24 2364652, at *1 (C.D. Ill. June 6, 2008) (“[A] third party’s lack of diversity
 25 [will not] destroy federal subject matter jurisdiction for purposes of removal
 26 if it otherwise exists on the basis of the citizenship of or the claims between
 27 the original parties.” (quoting 14B Charles Alan Wright, Arthur R. Miller,
 28 Edward H. Cooper & Joan E. Steinman, *Federal Practice & Procedure* §
 3723 (3d ed. 1998 & 2007 Supp.)). Nevertheless, upon information and
 belief, **Juniper Capital Partners, LLC**, is owned by a similar series of
 other LLCs, described in Exhibit 2 and the accompanying corporate
 organization chart which leads back to Canadian owners, and principle
 place of business outside of Nevada.

1 citizenship of nominal parties or parties who have no real interest in the
2 controversy is immaterial”).

3 9. Therefore, Plaintiffs and Defendants are diverse and this Court
4 has diversity jurisdiction.

5 10. Based on the relief requested in Plaintiffs’ First Amended
6 Complaint, the amount in controversy allegedly exceeds \$75,000. Indeed,
7 for diversity purposes, their requests for compensatory damages, punitive
8 damages, injunctive/declaratory relief, and attorney fees all count toward
9 the amount in controversy. *See, e.g.,* Wright & Miller, 14AA FED. PRAC. &
10 PROC. CIV. § 3702.5 (4th ed.) (collecting numerous authorities). Of course,
11 neither BZ Clarity or the co-defendants concede that any damages,
12 prospective relief, or attorney fees are actually warranted here.

13 11. Under 28 U.S.C. § 1441(a), this action is properly removed to
14 this Court, because (1) this Court has original jurisdiction, under 28 U.S.C.
15 §1332; and (2) the action is currently pending in the state of Nevada.

16 12. BZ Clarity further states that all defendants have consented to
17 this petition *for* removal to Federal Court.

18 13. Proof of service upon BZ Clarity is attached hereto as Exhibit 4.

19 14. A true and correct copy of this petition will be provided to
20 Plaintiffs and filed with the Clerk of the Eighth Judicial District Court of
21 the State of Nevada, Department XXVII.

22 15. BZ *Clarity* reserves the right to amend or supplement this
23 petition.

24 16. BZ Clarity further states that less than one year has passed
25 since *commencement* of the action. 28 U.S.C § 1446(b).

1 WHEREFORE, BZ Clarity prays that this action be removed to the
2 United States District Court for the District of Nevada.

3 Dated this 24th day of July, 2020.

4 LEWIS ROCA ROTHGERBER CHRISTIE LLP
5

6 By: /s/ J Christopher Jorgensen

7 DANIEL F. POLSENBERG (SBN 2376)
8 J CHRISTOPHER JORGENSEN (SBN 5382)
9 ABRAHAM G. SMITH (SBN 13,250)
10 3993 Howard Hughes Parkway,
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

11 *Attorneys for Defendant BZ Clarity*
12 *Holdings, LLC d/b/a Base Entertainment*
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I caused a true and accurate copy of the foregoing document entitled "Petition For Removal of a Civil Action" to be filed with the Clerk of the Court via the CM/ECF system, which will send an electronic copy to all registered participants:

Kevin R. Stolworthy
Brandon P. Johansson
ARMSTRONG TEASDALE LLP
3770 Howard Hughes Parkway,
Suite 200
Las Vegas, Nevada 89169

Mark E. Ferrario
Jason K. Hicks
GREENBERG TRAURIG, LLP
10845 Griffith Peak Drive Suite 600
Las Vegas, Nevada 89135

James L. Sanders
Kasey J. Curtis
REED SMITH LLP
355 South Grand Avenue, Suite
2900
Los Angeles, California 90071

*Attorneys for Defendants Slate the
Voice Limited Partnership and Base
the Voice, LLC*

*Attorneys for Plaintiffs and
Counter-defendant Juniper
Capital Partners, LLC*

/s/ Jessie M. Helm
An employee of Lewis Roca
Rothgerber Christie LLP

INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
1	July 20, 2020, First Amended Complaint	25
2	May 21, 2020, Declaration of Jay Wolf in Support of Counter-Defendant Juniper Capital Partners, LLC's Motion to Dismiss for Lack of Personal Jurisdiction	8
3	July 23, 2020, Declaration of Tim Ward in Support of Petition for Removal	3
4	June 30, 2020, Affidavit of Service (BZ Clarity Holdings, LLC)	2